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IN THE

CHARLES ELMORE CROPLEY
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Supreme Court of the United States

October Term, 1949

No. 13

UNITED STEELWORKERS OF AMERICA, CIO et al

Petitioners

v.

NATIONAL LABOR RELATIONS BOARD

On Writ of Certiorari to the United States Court of Appeals
for the Seventh Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

United Steelworkers of America, CIO, et al, petitioners in the above entitled cause, hereby petition for rehearing.

GROUND UPON WHICH REHEARING IS ASKED

The grounds which petitioners request a rehearing is that the Court's affirmance of the lower Court's judgment was by an equally divided court; and that, so far as petitioners are aware, an additional justice would be available to participate in the decision of the case upon rehearing.

The issue ruled upon by the Court in this case is the constitutionality of Section 9(h) of the National Labor Relations Act, as amended. That section provides for the execution, by each officer of a labor organization, of an oath:

- (1) "that he is not a member of the Communist Party or
- (2) "affiliated with such party, and
- (3) "that he does not believe in, and is not a member

of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods."

Of the six justices who participated in the consideration of the case, only three, that is the Chief Justice and Justices Reed and Burton, voted to uphold the statutory provision in its entirety. Three justices, on the other hand, regarded the statutory provision as unconstitutional in whole or in part. Of these, Justice Black thought the provision unconstitutional in its entirety. Justice Frankfurter expressed the view that the exaction of that part of the oath above designated as (3) is unconstitutional, and evidently viewed the portion designated (2) as likewise invalid. Justice Jackson thought part (3) of the oath requirement invalid, and the remainder constitutional.

Thus the Court divided 3-3 on that part of the oath labeled (3); divided 4-2 on that part labeled (2); and divided 5-1 on part (1). The Court of Appeals had upheld the oath requirement in its entirety, and its judgment conditioned enforcement of the Labor Board's order upon execution of the complete oath by all of the Union's officers. This Court's affirmance of that judgment is thus, insofar as it compels execution of the entire oath (including part (3)—the "belief" part), by an equally divided court.

Indeed, since if a part of the statutory provision were held unconstitutional a question would arise, not resolved by the court, as to the separability of the remainder of the statute, it may be that the affirmance rests in its entirety upon an equally divided vote. Justice Frankfurter expressed the view that the valid portion of the statute might stand alone, but none of the other justices took a position with respect to this issue.

It is respectfully submitted that the union officers should not, on pain of forfeiting the remedying of unfair labor practices against the Union, be required to execute an oath considered to be unconstitutional by half of the justices of this court who participated in this decision.

It is further submitted that the issues involved in this case

are too controversial and are of too great public importance to be definitively disposed of by an affirmation by an equally divided court of six justices. Such a decision cannot, we submit with all deference, command the general acceptance necessary finally to settle issues so doubtful and so important. It would, of course, be open to the union officers, in connection with some future Labor Board proceeding, again to refuse to sign the oath, or to refuse to sign it except as revised in the light of the dissenting opinions, with a view to bringing the issue again before this Court in order to secure an adjudication in which additional justices might participate. But it would take years for the question again to reach the Court—three years have now elapsed since the employer unfair labor practices which gave rise to this case—, and, in the meantime, the Union would suffer hardship and the status of the oath requirement would remain in doubt.

If, on the other hand, a rehearing is granted, there is every reason to suppose that the issue can be promptly and definitively disposed of by reason of the participation of an additional justice, Justice Douglas. Justice Douglas was absent when this case was argued, but has now returned to the Court and, so far as petitioners are aware, would be available to participate in consideration and decision of the case on re-argument.

CONCLUSION

For the reasons stated it is respectfully submitted that this petition for rehearing should be granted.

Respectfully submitted,

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I certify that this petition for rehearing is presented in good faith and not for delay.

Thomas E. Harris